

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MAXWELL B. WILLIAMS and CLAIRE
 N. WILLIAMS,

Plaintiffs,

v.

THE TRAVELERS HOME AND MARINE
 INSURANCE COMPANY and THE
 TRAVELERS INDEMNITY COMPANY,

Defendants.

Case No. 2:16-cv-01856-APG-CWH

**ORDER GRANTING MOTION TO
 DISMISS**

(ECF No. 5)

Plaintiffs Maxwell Williams and Claire Williams filed this lawsuit in Nevada state court on June 17, 2016. Defendants The Travelers Home and Marine Insurance Company (THMIC) and The Travelers Indemnity Company (TIC) removed it to this court on August 5, 2016. ECF No. 1. The defendants now move to dismiss most of the Williamses' claims. They argue that TIC should be dismissed because it is not a party to the insurance policy at issue. They also argue the claims for vicarious liability and punitive damages are remedies, not causes of action. According to the defendants, all of the Williamses' other claims, except for their breach of contract claim, are time-barred. Finally, they contend the Williamses cannot bring negligence and intentional infliction of emotional distress claims against their insurance carrier.

I convert the motion into one for summary judgment because the parties have attached evidence to the motion and response. I grant summary judgment in favor of TIC because it is not a party to the insurance contract out of which the Williamses' claims arise. I dismiss the asserted claims for vicarious liability and punitive damages because these are theories of recovery, not causes of action. I grant summary judgment in THMIC's favor on all of the Williamses' remaining claims, except for their breach of contract and negligence claims, as time-barred. Finally, I grant summary judgment in THMIC's favor on the negligence claim because an insured cannot sue his or her insurer for negligence where that claim would be duplicative of a breach of

1 contract or bad faith claim. As a result, the Williamses' only remaining claim is a breach of
2 contract claim against THMIC.

3 **I. BACKGROUND**

4 The Williamses purchased homeowners' insurance from THMIC to cover their residence.
5 ECF Nos. 1-1 at 5; 5-1. In June 2010, they suffered a water loss at their home and they submitted
6 a claim under the policy. ECF No. 1-1 at 5. According to the complaint, THMIC inspected the
7 property but refused to pay benefits for the reasonable repair of the residence or for replacement
8 of damaged contents. *Id.* at 6. The complaint alleges that THMIC "ultimately closed the
9 Plaintiffs' outstanding claims without arriving at a fair and equitable settlement" *Id.* On
10 October 5, 2011, THMIC sent a letter to the Williamses stating that it was "closing this file"
11 because the Williamses allegedly had not cooperated with THMIC. ECF No. 5-3.

12 Based on THMIC's alleged acts and omissions in its handling of the Williamses' claim,
13 the complaint asserts the following: (1) vicarious liability for the alleged actions or inactions of
14 the defendants' employees; (2) breach of contract for failing to pay benefits due under the policy;
15 (3) breach of the implied covenant of good faith and fair dealing for failing to make repairs or
16 replace the contents and for "closing the Plaintiffs' outstanding claims without arriving at a fair
17 and equitable settlement resolution;" (4) statutory violations for unfair claims practices; (5)
18 common law bad faith; (6) negligence; (7) intentional infliction of emotional distress; and (8)
19 punitive damages. *Id.* at 6-13.

20 **II. ANALYSIS**

21 Although styled a motion to dismiss, the parties attach evidence to the motion and the
22 response, which I have considered. I therefore convert the motion into one for summary
23 judgment. *See In re Rothery*, 143 F.3d 546, 549 (9th Cir. 1998); Fed R. Civ. P. 12(d).

24 Summary judgment is appropriate if the pleadings, discovery responses, and affidavits
25 demonstrate "there is no genuine dispute as to any material fact and the movant is entitled to
26 judgment as a matter of law." Fed. R. Civ. P. 56(a), (c). A fact is material if it "might affect the
27 outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
28

1 (1986). An issue is genuine if “the evidence is such that a reasonable jury could return a verdict
2 for the nonmoving party.” *Id.*

3 The party seeking summary judgment bears the initial burden of informing the court of the
4 basis for its motion and identifying those portions of the record that demonstrate the absence of a
5 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden
6 then shifts to the nonmoving party to set forth specific facts demonstrating there is a genuine
7 issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir.
8 2000). I view the evidence and make reasonable inferences in the light most favorable to the
9 nonmoving party. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir. 2008).

10 **A. Defendant TIC**

11 TIC contends it is not a party to the contract out of which the plaintiffs’ claims arise. The
12 Williamses respond that TIC is mentioned on page 11 of the policy, TIC sent them a pamphlet,
13 and TIC sent correspondence in July 2012 regarding an uncashed check made out to the
14 Williamses. They thus argue there are questions of fact regarding whether TIC is in privity of
15 contract with the Williamses.

16 The complaint does not allege facts supporting TIC’s liability. It groups the two
17 defendants together and identifies them collectively as “Travelers.” ECF No. 1-1 at 4-5. But it
18 contains no factual allegations about why TIC is liable. The insurance policy identifies the
19 insurer as THMIC. ECF No. 5-1 at 2. TIC is not listed as an insurer or a party to the contract.
20 The October 5, 2011 letter closing the claim file was issued by THMIC. ECF No. 5-3.

21 The Williamses rely on three exhibits to raise an inference that TIC was a party to the
22 insurance contract. The first is a privacy notice “given by Travelers Indemnity Company, and its
23 property and casualty insurance affiliates, members of the Travelers group of companies.” ECF
24 No. 8-2 at 11-12. THMIC identifies itself in the policy as “One of The Travelers Property
25 Casualty Companies.” *Id.* at 5. Consequently, THMIC’s use of the form does not indicate that
26 TIC is a party to the insurance contract.

1 The second exhibit is a pamphlet about calculating depreciation issued by TIC “and its
2 property casualty affiliates.” ECF No. 8-6. at 5. For the same reasons, this pamphlet does not
3 indicate TIC is a party to the insurance contract.

4 Finally, the Williamses rely on a July 7, 2012 letter sent to them from TIC. That letter
5 references the date of the loss and the claim number for their claim. ECF Nos. 8-5 at 2; *see also*
6 8-4 (October 2011 letter from THMIC listing same claim number and date of loss). The July
7 2012 letter states that “[o]ur records indicate the check number listed above has not been returned
8 to us as a cashed item by our bank.” *Id.* It is unclear why TIC, as opposed THMIC, sent this letter
9 to the Williamses. However, the letter does not raise an issue of fact that TIC was a party to the
10 insurance policy or had any obligations under it. Accordingly, I grant summary judgment in
11 TIC’s favor.

12 **B. Vicarious Liability and Punitive Damages**

13 THMIC argues vicarious liability and punitive damages are theories of recovery, not
14 causes of action. THMIC admits it is vicariously liable for its employees’ actions taken within
15 the scope of their employment. ECF No. 5 at 5. The Williamses do not oppose dismissal given
16 this admission by THMIC. ECF No. 8 at 3. They also agree that punitive damages are a remedy.
17 *Id.* at 6. The parties agree these are not independent claims. I therefore grant this portion of
18 THMIC’s motion.

19 **C. Statute of Limitations**

20 *1. Breach of the Implied Covenant of Good Faith and Fair Dealing/Bad Faith*

21 THMIC argues these claims are governed by a four-year limitations period, and because it
22 closed the case file and notified the Williamses of that fact on October 5, 2011, the Williamses’
23 bad faith claims are time-barred. The Williamses respond that this case is in the early stages and
24 it is unclear when THMIC breached the covenant.¹ The Williamses note that TIC sent a letter on
25 July 7, 2012. They thus argue the file was open in July 2012, which was less than four years
26

27 ¹ The plaintiffs did not request I defer ruling on the motion under Federal Rule of Civil Procedure
28 56(d), nor did they comply with that Rule’s requirements.

1 before they filed this lawsuit. Alternatively, the Williamses argue that the statute of limitations
2 does not begin to run until THMIC refuses payment, and there is no evidence THMIC ever made
3 a final decision not to pay.

4 The Williamses' duplicative² bad faith claims are governed by a four-year limitations
5 period. Nev. Rev. Stat. § 11.190(2)(c) (four-year period for "[a]n action upon a contract,
6 obligation or liability not founded upon an instrument in writing"); *see also Schumacher v. State*
7 *Farm Fire & Cas. Co.*, 467 F. Supp. 2d 1090, 1094-95 (D. Nev. 2006). The complaint alleges
8 that THMIC acted in bad faith because it closed the file without reaching a fair settlement. ECF
9 No. 1-1 at 6. THMIC sent a letter to the Williamses stating that the file was closed as of October
10 2011. The Williamses thus had until October 2015 to bring suit. They did not file their
11 complaint until June 2016. Their bad faith claims are therefore time-barred.

12 The Williamses' reliance on the July 2012 letter is misplaced. The fact that TIC inquired
13 about an uncashed check does not suggest that the claims file was still open or that THMIC was
14 still mulling whether to pay more benefits. THMIC stated in its October 2011 letter that it was
15 closing the file due to a purported lack of cooperation by the Williamses. Regardless of whether
16 that allegation was true, there is no genuine dispute that at that moment, THMIC was refusing to
17 pay anything further. The Williamses thus were aware as of that date that no additional benefits
18 would be forthcoming. They do not identify anything that occurred after October 2011, other
19 than the July 2012 letter, to suggest the closing of the file was not a final decision. I therefore
20 grant summary judgment in THMIC's favor on the Williamses' bad faith claims.

21 2. *Unfair Claims Practices*

22 This claim is governed by a three-year limitations period. Nev. Rev. Stat. § 11.190(3)(a)
23 (three-year period for "[a]n action upon a liability created by statute, other than a penalty or
24

25 ² An insurer's breach of the covenant of good faith and fair dealing is the same as bad faith. *See*
26 *Tracey v. Am. Family Mut. Ins. Co.*, No. 2:09-CV-01257-GMN-PAL, 2010 WL 3613875, at *2 (D. Nev.
27 Sept. 8, 2010) ("A claim of breach of the covenant of good faith and fair dealing is, in essence, a claim for
28 bad faith."); *Drennan v. Maryland Cas. Co.*, 366 F. Supp. 2d 1002, 1005 (D. Nev. 2005) (stating a "breach
of the good faith and fair dealing covenant constitutes bad faith when the relationship of the parties is that
of insurer and insured").

forfeiture”). This claim is time-barred for the same reasons as the bad faith claims. I therefore grant summary judgment in THMIC’s favor on the Williamses’ claim for unfair claims practices.

3. *Intentional Infliction of Emotional Distress*

This claim is governed by a two-year limitations period. Nev. Rev. Stat. § 11.190(4)(e) (two-year period for “an action to recover damages for injuries to a person”). This claim is time-barred for the same reasons as the bad faith claims. There is no allegation of outrageous conduct after the October 2011 closing of the file. I therefore grant summary judgment in THMIC’s favor on the Williamses’ intentional infliction of emotional distress claim.

D. Negligence

THMIC argues Nevada law does not recognize a claim for negligence by an insured against his or her insurer. It argues insurers do not owe insureds duties beyond what are owed under the contract and the duty of good faith. The Williamses respond that THMIC is vicariously liable for the negligence of its employees who ignored communications from the Williamses, ignored evidence of damage to the house, claimed that the parties had reached agreements that were not made, and did not fairly resolve the Williamses’ insurance claim.

The Williamses do not respond to THMIC’s citations to case law holding that Nevada does not recognize a negligence claim by an insured against his or her insurer that is duplicative of a breach of contract or bad faith claim. *See Phillips v. Clark Cnty. Sch. Dist.*, 903 F. Supp. 2d 1094, 1104 (D. Nev. 2012) (“Defendant argues that summary adjudication is appropriate because Defendant does not owe a duty of care beyond the duties imposed by the insurance contract and the corresponding duty of good faith The Court agrees.”); *Sierzega v. Country Preferred Ins. Co.*, No. 2:13-CV-1267-JCM-NJK, 2014 WL 1668630, at *5 (D. Nev. Apr. 25, 2014) (“Nevada does not recognize a negligence cause of action against an insurer who has wrongfully denied or delayed payment”). There may be circumstances under which an insurer could be liable to its insured for negligence. But I agree that cannot be the case when the claim is duplicative of a breach of contract or bad faith claim because the insured’s duties in those situations are defined by the contract and by the law on insurance bad faith, not by the law of

1 negligence. A negligence claim is particularly inappropriate when it is duplicative of a bad faith
 2 claim. As explained by Judge Mahan, “[i]f a plaintiff could succeed against an insurer under a
 3 theory of ordinary negligence, it would be absurd for courts to impose a stricter standard for
 4 identical claims arising under the covenant of good faith.” *Sierzega*, 2014 WL 1668630, at *5.

5 The Williamses’ negligence claim rests on allegations that THMIC’s employees did not
 6 respond to the Williamses, ignored evidence supporting their claim, claimed the parties had
 7 reached agreements that were not made, and failed to resolve the Williamses’ claim. These acts
 8 were taken as part of the claims handling process and are part of the alleged bad faith denial of
 9 benefits. THMIC’s duties thus are governed by the contract and the law on bad faith. I therefore
 10 grant summary judgment in THMIC’s favor on the Williamses’ negligence claim.³

11 **III. CONCLUSION**

12 IT IS THEREFORE ORDERED that defendants’ motion to dismiss (**ECF No. 5**) is
 13 **GRANTED**. Summary judgment is granted in favor of defendant The Travelers Indemnity
 14 Company on all of the Williamses’ claims against it. The Williamses’ claims for vicarious
 15 liability and punitive damages are dismissed because they are remedies, not independent causes
 16 of action. Summary judgment is granted in favor of defendant The Travelers Home and Marine
 17 Insurance Company on the Williamses’ claims for bad faith, breach of the covenant of good faith
 18 and fair dealing, unfair claims practices, intentional infliction of emotional distress, and
 19 negligence. The Williamses’ breach of contract claim against defendant The Travelers Home and
 20 Marine Insurance Company remains pending.

21 DATED this 8th day of March, 2017.

22 
 23 _____
 24 ANDREW P. GORDON
 UNITED STATES DISTRICT JUDGE

25 ³ I assume without deciding that the negligence claim is timely. The plaintiffs argue this claim is
 26 subject to a six-year limitations period under *Job’s Peak Ranch Cmty. Ass’n, Inc. v. Douglas Cnty.*, No.
 27 55572, 2015 WL 5056232, at *4 (Nev. Aug. 25, 2015) (stating that “claims for negligence based on breach
 28 of a written contract expire after six years, NRS 11.190(1)(b)”). The defendants did not respond to this
 contention. I decline to consider the defendants’ argument, raised for the first time in the reply brief, that
 the negligence claim is barred by the policy’s two-year limitation. See *Vasquez v. Rackauckas*, 734 F.3d
 1025, 1054 (9th Cir. 2013).